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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,407	09/23/2003	Daniel E. Rubin	P24221	1073

7055 7590 12/19/2005

GREENBLUM & BERNSTEIN, P.L.C.  
1950 ROLAND CLARKE PLACE  
RESTON, VA 20191

EXAMINER

AGWUMEZIE, CHARLES C

ART UNIT	PAPER NUMBER
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3621

DATE MAILED: 12/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/667,407

Applicant(s)

RUBIN ET AL.

Examiner

Charlie C. Agwumezie

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/23/03</u> . | 6) <input type="checkbox"/> Other: _____  |

### DETAILED ACTION

1. Claims 1-19, are pending and has been examined.

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-19, are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 7-8, 10-20 and 23-25 of U.S. Patent No. 6,654,724.

Although the conflicting claims are not identical, they are not patentably distinct from each other.

Claim 1 of the U.S. Patent No. 6,654,724 is obvious variant of claim 1 of the current application since the main difference is substituting or changing patient's identity information with customer's identity information a variation of U.S. Patent 6,654,724. Both systems perform same operation and output same or equivalent results.

Claim 2 is obvious variant of Patent claim 2; Claim 3 is a verbatim copy of Patent claim 3 and 19; Claim 4 is a verbatim copy of Patent claim 23; Claim 5 is obvious variant of Patent claim 10 and 24; Claim 6 is a verbatim copy of patent claim 12; Claim 7 is a verbatim copy of patent claim 7; Claim 8 is verbatim copy of patent claim 8; Claim 9 is obvious variant of Patent claim 9; Claim 10 is verbatim copy of Patent claim 11. Claim 11 is obvious variant of patent claim 15; Claim 12 is obvious variant of patent claim 16; Claim 13 is a verbatim copy of patent claim 17; Claim 14 is a verbatim copy of patent claim 18; Claim 15 is a verbatim copy of patent claim 19; Claim 16 is a verbatim copy of patent claim 20; Claim 17 is a verbatim copy of patent claim 25; Claim 18 is obvious variant of patent claims 1, 10, 13 and 14; Claim 19 is a verbatim copy of Patent claim 12.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of applicant's invention to modify claims 1-3, 7-8, 10-20 and 23-25 of the U.S. Patent No. 6,654,724 by adding and/or removing the limitations resulting generally in the claims of the

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present application since the present application and the claims recited in U.S. Patent No. 6,654,724 actually perform the same or similar function. It is well settled that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. *In re Karlson*, 136 USPQ 184 (CCPA 1963; *Also note Ex parte Rainu*, 168 USPQ 375 (Bd. App. 1969). Omission of a reference element whose function is not needed would be obvious to one of ordinary skill in the art.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles C. Agwumezie whose number is (571) 272-6838. The examiner can normally be reached on Monday – Friday 8:00 am – 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on (571) 272 – 6712.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

Any response to this action should be mailed to:

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**Commissioner of Patents and Trademarks**

**Washington D.C. 20231**

Or faxed to:

(571) 273-8300. [Official communications; including After Final communications labeled "Box AF"].

(571) 273-8300. [Informal/Draft communications, labeled "PROPOSED" or "DRAFT"].


Hand delivered responses should be brought to the United States Patent and Trademark Office Customer Service Window:

**Randolph Building,**

**401 Dulany Street**

**Alexandria VA. 22314**

**Charlie Lion Agwumezie**  
**Patent Examiner**  
**Art Unit 3621**  
**December 12, 2005**

  
**JAMES P. TRAMMELL**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNICAL FIELD**